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FEDERAL COMMUNICATIONS COMMISSION
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February 8, 1993

Federal Communications Commission
1919 M Street N.W.
Washington, D.C. 20554

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Re: Cable Television Rulemaking,
Docket Number 92-264, Ownership
Limitations and Transfer Provisions

Dear Sir or Madam:

I am making these comments on behalf of four franchising authorities in Florida, the Cities of Inverness, Crystal River, Dunnellon, and the Town of McIntosh. These authorities all have serious concerns regarding the subject matter of this proceeding, especially the City of Inverness, which is grappling with it now. My comments are designed to express very specific concerns which have come up during our dealing with this matter.

First of all, we do not have a problem with various types of ownership in the cable field. We feel that the current system would be improved by competition provided by telephone and electric companies, large corporations, and satellite concerns. In fact, the consumer would likely benefit from the advanced technology being provided by the phone companies; better reception would be the result. More competition can only benefit the customer nationwide.

Our major concern is with the transfer provisions and how they will apply. First of all, the Act specifically states that the franchising authorities shall not be prevented from prohibiting ownership or control by any person if it would eliminate or reduce competition. This tells us that we are allowed to prevent transfers that would eliminate cable competition in our areas. However, issues have come up in regard to this. As simple a matter as defining what a transfer is has become unclear. In regulating transfers that would tend to eliminate competition, the situation most likely to come up is that of one licensed cable company being bought by another already licensed company. In many of these cases, the buyer does not need a "franchise" to operate the new

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assets, because they already have one for their own systems in the jurisdiction. This is especially true in overbuilds and in county franchises which cover a larger geographic area. Since the buyer does not need the seller's "franchise" to operate (since they already have one) they take the position that they are merely purchasing assets of the seller. These "assets" include everything except the superfluous franchise itself. It follows from there to the cable companies' claim that since a "franchise" is not being transferred, only assets, the local authority has no regulatory power over the transfer. This is currently the situation with one of my clients. Another situation that would create confusion is the one in which there are two competing franchises and one seeks to transfer part of its area to the other. This may be a simple business decision to change the area of operation, or it may be an attempt to "carve up" the jurisdiction so that despite the presence of more than one franchisee in the jurisdiction, a monopoly (or rather, two monopolies) is the end result. This type of a partial sale is also one which may be seen to fall through the cracks in the law, although it certainly could affect cable competition within the jurisdiction. These situations need to be regulated by local authorities to ensure that the provisions of the Act are not cheerfully avoided.

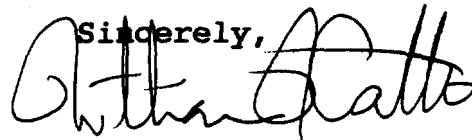
The F.C.C. needs to make a rule that would indicate that any change in ownership which would cause or create an involuntary change in cable companies for any subscriber is a "transfer" that can be regulated by the local authority. This way, all situations that tend to reduce competition would be under the auspices of the Act and local regulation. Not only would that prevent the "sale of assets" argument, but it would also apply to situations where companies seek to transfer some, but not all, of their territory within a jurisdiction to a competing franchisee. The cable companies may argue that such a rule would give the authorities power to limit competition as well; however, such is not the case. The franchising authority would still have to give a valid and reasonable rationale to deny any transfer; if necessary, I assume the reason could be tested in court or in administrative proceedings. We only seek a clear definition of our right to regulate, as we are well aware of our responsibility to regulate fairly.

In order to operate this system in a cost effective and expeditious manner, an administrative hearing framework providing adjudication of disputes over transfer rights is needed. We certainly do not need to burden the federal courts with the vast majority of these matters, as their caseload is high enough. Although I assume the local authorities will act in good faith, cable operators whose transfers are denied need to have access to a faster procedure. This will protect their financial interest better than the long delays associated with court litigation. It

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will serve also to keep the amount of damages and attorney's fees to be borne by the losing side at a minimum. I assume that this framework is already in place in other federally regulated areas; it needs only to be expanded.

In closing, I must point out that the local franchising authorities of necessity represent two groups with vested interests in these matters. One is, of course, themselves. However, the local authorities must also be the watchdogs for the subscriber. The cable viewer in a local area has no other effective protection. He must look to his government to empower him. The cable companies will always have recourse from an adverse decision, as they are large and well funded. The adoption of laws giving the local authorities meaningful transfer and regulatory rights is the only way to provide similar recourse to the citizen.

Sincerely,


WILLIAM J. CATTO

WJC/tam

cc: City of Inverness
City of Crystal River
City of Dunnellon
Town of McIntosh